IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1497 OF 2002

Bombay Gas Company Limited. ...Petitioner.
Vs.
Mr. Havish Shankar Phadke & Anr. ...Respondents.
....
Ms.S. V. Kher i/b. R.M. G. Law Associates for the Petitioner.
None for the Respondent.
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CORAM : DR.D.Y.CHANDRACHUD, J.

December 12, 2006.

P.C.

On 17th September 1983, the Petitioner served a notice under Section 25FFA of the Industrial Disputes Act, 1947 intimating to the State Government its intention to close down the undertaking of the Petitioner at Lalbaug. Simultaneously, an application for permission to close down the undertaking was filed before the State Government under Section 25-O. The Government granted permission to close down the undertaking on 23rd November 1983. The Union representing the workmen filed an appeal before the Industrial Tribunal under the Industrial Disputes Act, 1947 which came to be allowed on 13th March 1987. The order of the appropriate Government was set aside. The Petitioner

thereupon preferred a Writ Petition before this Court being W.P. 2067 of 1987. By a judgment and order dated 7th April 2000 (2000 II CLR 427) this Court set aside the order of the Tribunal and restored the order of the State Government allowing closure of the undertaking. The Special Leave Petition against the judgment of this Court was dismissed by the Supreme Court on 18th August 2000. The undertaking was thereupon closed down with effect from 26th December 1983. The Respondent-workman had instituted an application under Section 33C-2 of the Industrial Disputes Act, 1947 being IDA 384 of 1998 claiming wages with effect from December 1997. The management moved an application at Exh.C-3 for dismissal of the application. The application filed by the management was dismissed by the impugned order dated 22nd February 2002.

A similar application was preferred by the Respondent-workman claiming wages for the period from 1st January 1984 to November 1996. The management's application for the dismissal of the application was rejected by the Industrial Court against which order, a Writ Petition was filed before this Court. While allowing the Writ Petition preferred by the management, a Learned

Single Judge of this Court, Mr.Justice D.G. Karnik made the following observations in a judgment dated 7th June 2005 in Writ Petition 1323 o 2002:

> "I have perused the order of the Division Bench of this Court passed in Writ Petition No.2067 of 1987. By the said judgment the Division Bench has not only restored the order of the Government of Maharashtra granting permission for closure of the undertaking but has also further held that the Petitioner company was required to close down its undertaking for the reasons beyond its control. The closure was held to be bonafide. As stated earlier the Special Leave Petition against the judgment of the Division Bench has been dismissed. It therefore, cannot be disputed that the undertaking of the Petitioner company has been finally closed down with effect from 26th December 1983 and services of its all employees including that of the Petitioner stand terminated. Learned Counsel for the Petitioner reiterates that the compensation payable to the workmen on account of termination of services has been paid as provided under the I.D. Act. It is clear that the respondent no.1 is not an

> employee of the Petitioner with effect from 26th December, 1983. In view of this, the respondent no.1 is clearly not entitled to claim wages from 1st January, 1984. The application under Section 33(C)(2) of the I.D. Act by the Respondent no.1 for wages beyond 26th December, 1983 cannot be entertained as the respondent no.1 was not a workman either on the date of the application or even during the period for which the salary has been claimed."

The order passed by the Learned Single Judge in the aforesaid case is squarely applicable to the situation which arises in the present case. The services of the workman were terminated by a notice dated 17th September 1983 with effect from 26th December 1983. The closure has been upheld by a Division Bench of this Court. The order was confirmed by the Supreme Court.

In the circumstances, the Labour Court was in error in declining to accept the request of the management for a dismissal of the application. Rule is accordingly made absolute by quashing

and setting aside the order of the Labour Court dated 22nd February 2002 (Exh.K). Application (IDA) No.384 of 2001 shall accordingly stand dismissed.

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